

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

UNITED STATES POSTAL SERVICE

and

Case No. 21-CA-120046(P)

KEVIN COLE

Michelle Scannell, Esq., Counsel for the General Counsel.

Rebecca Horan, Esq., Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on September 8, 2014 in Los Angeles, California. The Complaint herein, which issued on April 29, 2014 and was based upon an unfair labor practice charge that was filed on January 3, 2014 by Kevin Cole, alleges that since about December 18 and 19, 2013¹ Kevin Cole, Chief Shop Steward and Maintenance Craft Director for Southwest Coastal Area Local, APWU Local 917, herein called the Union, has requested certain information from the United States Postal Service, herein called the Respondent, which information was necessary for, and relevant to, the Union in the performance of its duties as the collective bargaining representative of certain of the Respondent's employees, but since that date the Respondent has failed and refused to provide the Union with the information, in violation of Section 8(a)(1)(5) of the Act.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that the Board has jurisdiction over it by virtue of Section 1209 of the PRA, and that the American Postal Workers Union, AFL-CIO, herein called APWU, and the Union are each labor organizations within the meaning of Section 2(5) of the Act. The Union has been a constituent part of the APWU and has functioned as the agent of the APWU in the representation of certain employees represented by the APWU.

II. The Facts

Cole has been employed by the Respondent for twenty five years at its Anaheim, California processing and distribution center, herein called the facility and, at times, referred to as the Anaheim P&DC. He is also a member of the Union and, at the time of the hearing, he had been the chief steward for the Union at the facility for four years and had been an organizer for the Union for four months. In addition, from April 2011 through April 2014 he was the maintenance craft director² for the maintenance employees employed in ninety nine buildings covered by the Union in Orange County and part of Long Beach, California. As maintenance

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2013.

² As chief steward at the facility, he makes requests for all employees at the facility; as maintenance craft director he makes requests for the employees at the ninety nine buildings covered by the Union.

craft director his responsibility is to “...enforce the contract as it concerns the maintenance employees in ninety nine buildings.” He testified that when stewards file grievances at locations other than the ones that they are employed at or cover, the Union President, Richard Cantu, signs a certification, certifying that the steward is authorized to handle the grievance, and Counsel for the General Counsel introduced as an exhibit a grievance that Cole filed in January with Cantu’s certification attached. He testified that these certifications are not required for requests for information, and he has regularly made requests for information, without Cantu’s certification, and has never been denied the information prior to the instant situation.

This case involves an information request that Cole faxed to the Respondent on December 18. The request is entitled: “REQUEST FOR INFORMATION AND DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE.” The nature of the allegation is stated as: “Improper Cust Staff” and requests: “Copy LDC38 code 52 actual work hours for all offices Santa Anna District October 1, 2012 through September 30, 2013. Copy total line H-WH/YR from PS Form 4852 for all offices in Santa Anna District.” On the following morning his information request was returned to him with a note signed by Vickie Owen, the manager of maintenance operations at the Respondent’s Santa Anna P&DC, stating: “Need names of offices requesting. Once received, request will be approved.” Later that same day, Cole faxed to Owens a five page document. The first two pages were his original information request that he faxed to the Respondent the prior day including Owen’s request for the names of the offices that he was requesting, with the other three pages containing a listing of Respondent’s offices in the area that he had obtained from Owen in 2011 pursuant to an information request that he had sent her at that time. Cole placed arrow markings alongside all the offices that were within the Santa Ana District to respond to Owen’s request. He testified that this information request relates to thirty six grievances that had been filed by the Union, but were held in abeyance pending receipt of the information requested. After faxing this clarification to the Respondent, he called the Respondent’s office and spoke to “Marianne” to confirm receipt of the fax. To date the Union has not received the information, but he understands that it had recently been mailed to the Union. By letter dated March 28, 2014, Owen wrote to Cole, *inter alia*:

Per your own collective bargaining agreement 17.2.B states “the union may designate **in writing**, one union officer/steward to investigate, present, adjust etc. a specific problem or issue to determine if a grievance exist. This is not an ongoing certification rather specific for each grievance or problem. This did not happen you [sic] are not authorized to represent Santa Ana P&DC or any other office other than Anaheim P&DF.

The information requested is not relevant to your collective bargaining duties as set forth in Article 17.2. You are not authorized to investigate or represent grievances on behalf of Santa Ana P&DC or any other office other than Anaheim P&DF.

Lastly, management responded the same day it received the original information request requesting you to provide the names of offices you were requesting information on. To date we have not received your clarification or response. Therefore I thought this was closed.

I am attaching both Information Requests dated 12-19-13 for your review and clarification. In the past you have always attached written authorization with your information request and grievances. This Information request for the whole Santa Ana District was not received with any authorization provided therefore you are in violation of your own contract Article 17 and 31.

Cole testified that he did not respond to Owen’s letter because:

I had provided the clarification she had requested earlier and I never, in terms of authorization, I had never been required to provide certification letters with requests for information and I have always been provided the information, and I believe that she got it.

Owen testified that in addition to her other duties, she is the Step 1 designee for grievances and information requests for the maintenance employees. The contract states that the number of stewards shall be determined by the number of employees at the facility, and there was one steward per tour at the Santa Ana P&DC. The stewards have the right to discuss problems with the employees at the facility, with the permission of the supervisor and could request information from the Respondent, but only if he/she was “certified” or had “permission from the Union President to work on a particular grievance in our facility.”³ Cole was not a steward at the Santa Ana P&DC, he was an elected maintenance director. She dealt with Cole in the past on “several grievances, several discussions.” In addition, he has sent information requests to her office. She was asked:

Q So what was your understanding of Mr. Cole’s right at that point to investigate or process a grievance or submit an information request?

A Really he had no right at all, since he has not a union steward at our facility, nor when he did submit the information request was the little form with Mr. Cantu’s signature on it authorizing him to work on this particular grievance accompanied with this request.

Q Had you received that in connection with information requests?

A Yes, because the information requests, 90 percent of the time, were followed up or included with a grievance.

Q So what would you receive?

A I would receive the authorization form, an information request, and a grievance all at one time, on most of the items that I got from Mr. Cole.

She testified that at a later time she learned that Cole had, in fact, faxed the five page clarification, although she only received the one page and upon learning that, she provided all the requested information.

Cole repeated on rebuttal that he has never used, or needed, a certification letter from Cantu for information requests and, in the past, he has received information from the Respondent, pursuant to his requests, without such a certification. Cantu testified the he submits authorizations to Union representatives filing grievances for the Union; these authorizations (or certifications as they have sometimes been referred to) are not required for information requests.

³ Article 17.2.B. of the Contract states: “At an installation, the Union may designate in writing to the Employer one Union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.” Article 17.2.E. states: “A steward may be designated to represent more than one craft, or to act as a steward in a craft other than his/her own, whenever the Union so agrees, and notifies the Employer in writing.”

III. Analysis

An employer's duty to bargain collectively under the Act includes an obligation to provide a union with information it requests in order to decide whether to process a grievance, and the standard for relevancy is a liberal "discovery-type standard." *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Information must be produced if it is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative." *Pennsylvania Power Co.*, 301 NLRB 1104-1105 (1991), and information pertaining to bargaining unit employees is presumptively relevant. *Postal Service*, 332 NLRB 635 (2000).

All the elements of a violation are present here. I found Cole and Cantu to be a totally credible and convincing witness; although Cowen was not an incredible witness, her testimony was not as convincing due to inconsistencies in the Respondent's defense. The day after receiving Cole's request, she asked for more specificity regarding the locations requested without denying the relevancy of the requested information or Cole's authority to make the request, stating that upon receipt of that information, his "request would be approved." I also credit Cole and Cantu's testimony that certifications are not required for information requests. Further, while claiming that she only received one page of the request, the fax states that five pages were sent and received. Even if true that she only received the front page of the request, as all five pages were successfully faxed to the Respondent, its mistake in only forwarding one page to Owen is no defense to its refusal to give the Union this information. As Cole's request involved unit employees, and was relevant to the Union in determining whether to proceed with grievances regarding the staffing of the custodial employees, the Respondent's failure to furnish this information to the Union violated Section 8(a)(1)(5) of the Act.

Conclusions of Law

1. The Board has jurisdiction over the Respondent by virtue of Section 1209 of the PRA.

2. At all material times the American Postal Workers Union, AFL-CIO, and the Union have been labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1)(5) of the Act by failing and refusing to furnish the Union with the information that it requested on about December 18, 2013.

The Remedy

Having found that the Respondent violated the Act by refusing to give the Union the information that Cole requested on about December 18, 2013, I recommend that it be ordered to turn over this information to the Union, forthwith, if it hasn't already done so, and to post a notice to this effect to its employees at the Santa Ana facility.

Upon the foregoing findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended⁴

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The United States Postal Service, its officers and agents, shall

1. Cease and desist from failing and refusing to provide the Union with information that it requested, which information was relevant to, and necessary for, the Union as the bargaining representative of certain of its employees, or in any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Provide the Union with the information that it requested on about December 18, 2013 in a timely manner, if it hasn't already done so.

(b) Within 14 days after service by the Region, post at the Santa Ana P&DC located at 3101 West Sunflower Avenue, Santa Ana, California, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 15, 2014

Joel P. Biblowitz
Administrative Law Judge

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to furnish the Southwest Coastal Area Local, APWU ("the Union") with information that it requested which was relevant to the Union as the collective bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give the Union the information that it requested on about December 18, 2013.

UNITED STATES POSTAL SERVICE
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor
Los Angeles, California 90017-5449
Hours: 8:30 a.m. to 5 p.m.
213-894-5200.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-120046 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.